IC 24-4.5

ARTICLE 4.5. UNIFORM CONSUMER CREDIT CODE

IC 24-4.5-1

Chapter 1. General Provisions and Definitions

IC 24-4.5-1-101

Short title

Sec. 101. Short Title Let This Article shall be known and may be cited as Uniform Consumer Credit Code.

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-102

Purposes; rules of construction

Sec. 102. Purposes; Rules of Construction½(1) This article shall be liberally construed and applied to promote its underlying purposes and policies.

- (2) The underlying purposes and policies of this article are:
 - (a) to simplify, clarify, and modernize the law governing retail installment sales, consumer credit, small loans, and usury;
 - (b) to provide rate ceilings to assure an adequate supply of credit to consumers:
 - (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
 - (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
 - (e) to permit and encourage the development of fair and economically sound consumer credit practices;
 - (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and (g) to make uniform the law including administrative rules among
 - (g) to make uniform the law including administrative rules amon the various jurisdictions.
- (3) A reference to a requirement imposed by this article includes reference to a related rule of the department adopted pursuant to this article.
- (4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, 2001.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.2; P.L.122-1994, SEC.1; P.L.45-1995, SEC.2; P.L.176-1996, SEC.1; P.L.172-1997, SEC.1; P.L.80-1998, SEC.2; P.L.23-2000, SEC.1; P.L.63-2001, SEC.1 and P.L.134-2001, SEC.1; P.L.82-2002, SEC.1.

IC 24-4.5-1-103

Supplementary general principles of law applicable

Sec. 103. Unless displaced by the particular provisions of this

article, the Uniform Commercial Code (IC 26-1) and the principles of law and equity (including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause) shall supplement its provisions.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.152-1986, SEC.57.

IC 24-4.5-1-104

Construction against implicit repeal

Sec. 104. Construction Against Implicit Repeal - This Article being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-105

Severability

Sec. 105. Severability - If any provisions of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable.

(Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-106

Adjustment of dollar amounts

Sec. 106. (1) The dollar amounts in this article designated as subject to change shall change, as provided in this section, according to the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1957-59 equals 100, compiled by Bureau of Labor Statistics, United States Department of Labor, and referred to in this section as the Index. The Index for October, 1971, is the Reference Base Index.

- (2) The dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, except that:
 - (a) the portion of the percentage change in the Index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts on March 5, 1971;
 - (b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this article as a result of earlier application of the section; and
 - (c) in no event shall the dollar amounts be reduced below the amounts appearing in this article on March 5, 1971.
- (3) If the Index is revised after December 1967, the percentage of change shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised

Reference Base Index shall be determined by multiplying the Reference Base Index by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

- (4) The department shall issue an emergency rule announcing:
 - (a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and
 - (b) promptly after the changes occur, changes in the Index required by subsection (3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.
- (5) A person does not violate this article through a transaction otherwise complying with this article if the person relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts.

(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1972, P.L.182, SEC.1; Acts 1972, P.L.182, SEC.2.) As amended by P.L.152-1986, SEC.58; P.L.3-1990, SEC.84; P.L.14-1992, SEC.3; P.L.1-1994, SEC.117; P.L.122-1994, SEC.2.

IC 24-4.5-1-107

Waiver; agreement to forego rights; settlement of claims

- Sec. 107. Waiver; Agreement to Forego Rights; Settlement of Claims (1) Except as otherwise provided in this Article, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Article.
- (2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Article, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Article, if disputed in good faith, may be settled by agreement.
- (3) A claim, whether or not disputed against a buyer, lessee or debtor may be settled for less value than the amount claimed.
- (4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Article is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability. (Formerly: Acts 1971, P.L.366, SEC.2.)

IC 24-4.5-1-108

Effect of article on powers of organizations

Sec. 108. Effect of Article on Powers of Organizations - (1) This Article prescribes maximum charges for all creditors, except lessors

and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer credit sales (IC 24-4.5-2-104), consumer loans (IC 24-4.5-3-104), and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

- (2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this Article displaces existing limitations on their powers based solely on amount or duration of credit.
- (3) Except as provided in subsection (1) and IC 24-4.6-1, this Article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.
- (4) Except as provided in subsections (1) and (2), this Article does not displace:
 - (a) limitations on powers of supervised financial organizations (IC 24-4.5-1-301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or
 - (b) limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1974, P.L.115, SEC.3.) As amended by P.L.14-1992, SEC.4; P.L.122-1994, SEC.3.

IC 24-4.5-1-109

Persons licensed or authorized on October 1, 1971

Sec. 109. All persons licensed on October 1, 1971, under:

- (1) IC 24-5-4 (before its repeal on October 1, 1971);
- (2) IC 28-7-4 (before its repeal on October 1, 1971);
- (3) IC 28-7-2 (before its repeal on October 1, 1971);
- (4) IC 28-5-1-4;

are licensed to make supervised loans under this article. All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized.

As added by P.L.5-1988, SEC.128. Amended by P.L.3-1990, SEC.85; P.L.14-1992, SEC.5.

IC 24-4.5-1-201

Territorial application

Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article:

(a) a sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state;

- (b) a lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting on behalf of the lessor in this state; and
- (c) a loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.
- (2) With respect to sales made pursuant to a revolving charge account (IC 24-4.5-2-108), this article applies if the buyer's communication or indications of his intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this article applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state.
- (3) With respect to loans made pursuant to a lender credit card or similar arrangement, this article applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this state. If no communication or indication of intention is given by the debtor before the first loan, this article applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this state.
- (4) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.
- (5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:
 - (a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by IC 24-4.5-2 or by IC 24-4.5-3; and
 - (b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices of IC 24-4.5-2 or of IC 24-4.5-3.
- (6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.
- (7) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies

the creditor of a new or different address, the given address is presumed to be unchanged.

- (7.5) With respect to a consumer credit sale, consumer lease, or consumer loan, or modification thereof, to which this article does not otherwise apply by reason of subsections (1) through (3), if pursuant to a solicitation relating to a consumer credit sale, consumer lease, or consumer loan, a person who is a resident of this state sends a signed writing evidencing the obligation or offer of the person to a creditor in another state and receives the goods or service purchased, the goods leased, or the cash proceeds of the loan in this state:
 - (a) a seller, lessor, lender or assignee of his rights may not contract for or receive charges in excess of those permitted by IC 24-4.5-2 or by IC 24-4.5-3;
 - (b) the provisions of IC 24-4.5-2-301 and IC 24-4.5-3-301 shall apply as though the sale, lease, or loan was made in this state; and (c) the provisions of IC 24-4.5-6-101 through IC 24-4.5-6-117 shall apply as though the sale, lease, or loan was made in this state.
- (7.6) For the purpose of this section, a solicitation relating to a consumer credit sale, consumer lease, or consumer loan includes:
 - (a) with respect to sales and leases, an offer by a catalog, pamphlet, flier, letter, or similar written material to sell or lease goods or to sell services if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the buyer or lessee;
 - (b) with respect to loans, an offer by pamphlet, flier, letter, or similar written material to make loans if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the debtor; and
 - (c) with respect to sales, leases, and loans, an offer by telephone to extend credit if initiated by the seller, lessor, or lender.
 - (8) Notwithstanding other provisions of this section:
 - (a) except as provided in subsection (4), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and
 - (b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.
- (9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:
 - (a) that the law of another state shall apply;
 - (b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and
 - (c) that fixes venue.
- (10) The following provisions of this article specify the applicable law governing certain cases:

- (a) applicability (IC 24-4.5-6-102) of the provisions on powers and functions of the department; and
- (b) applicability (IC 24-4.5-6-201) of the provisions on notification and fees.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1979, P.L.236, SEC.1; P.L.152-1986, SEC.59; P.L.252-1987, SEC.5; P.L.14-1992, SEC.6; P.L.122-1994, SEC.4.

IC 24-4.5-1-202

Exclusions

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.
- (9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).
- (10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.217, SEC.1; Acts 1982, P.L.149, SEC.1; P.L.247-1983, SEC.1; P.L.14-1992, SEC.7; P.L.176-1996, SEC.2.

IC 24-4.5-1-203

Jurisdiction

Sec. 203. Jurisdiction - Any civil court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Article or with respect to any claim arising from a transaction subject to this Article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court

by the service of process.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.8: P.L.122-1994. SEC.5.

IC 24-4.5-1-301

General definitions

Sec. 301. General Definitions In addition to definitions appearing in subsequent chapters in this article:

- (1) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.
- (2) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.
- (3) "Average daily balance" means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).
- (4) "Closing costs" with respect to a debt secured by an interest in land includes:
 - (a) fees or premiums for title examination, title insurance, or similar purposes, including surveys;
 - (b) fees for preparation of a deed, settlement statement, or other documents;
 - (c) escrows for future payments of taxes and insurance;
 - (d) fees for notarizing deeds and other documents;
 - (e) appraisal fees; and
 - (f) credit reports.
- (5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.
- (6) "Consumer credit" means credit offered or extended to a consumer primarily for a personal, family, or household purpose.
- (7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
 - (8) "Creditor" means a person:
 - (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable in installments; and
 - (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.
- (9) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

- (10) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:
 - (a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;
 - (b) by the lender's payment or agreement to pay the debtor's obligations; or
 - (c) by the lender's purchase from the obligee of the debtor's obligations.
 - (11) "Official fees" means:
 - (a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or
 - (b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.
- (12) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, limited liability company, cooperative, or association.
- (13) "Payable in installments" means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.
- (14) "Person" includes a natural person or an individual, and an organization.
 - (15) "Person related to" with respect to an individual means:
 - (a) the spouse of the individual;
 - (b) a brother, brother-in-law, sister, sister-in-law of the individual;
 - (c) an ancestor or lineal descendants of the individual or the individual's spouse; and
 - (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to" with respect to an organization means:

- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;
- (c) the spouse of a person related to the organization; and
- (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.
- (16) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.
- (17) "Mortgage transaction" means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or

retained against land.

- (18) "Regularly engaged" means a person who extends consumer credit more than:
 - (a) twenty-five (25) times; or
- (b) five (5) times for transactions secured by a dwelling; in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.
- (19) "Seller credit card" means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.
- (20) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business:
 - (a) organized, chartered, or holding an authorization certificate under the laws of a state or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate, or deposit account; and
 - (b) subject to supervision by an official or agency of a state or of the United States.
- (21) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgage to send payments on a loan secured by a mortgage. (Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.218, SEC.1; P.L.14-1992, SEC.9; P.L.8-1993, SEC.358; P.L.122-1994, SEC.6; P.L.45-1995, SEC.3; P.L.176-1996, SEC.3; P.L.23-2000, SEC.2.

IC 24-4.5-1-302

Federal Consumer Credit Protection Act

Sec. 302. Federal Consumer Credit Protection Act - In this Article "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes both the Truth in Lending Simplification and Reform Act amendments (Public Law 96-221, Title VI, 94 Stat. 168) and any regulations issued pursuant to those laws. However, the department may otherwise define this term by rule issued in accordance with IC 24-4.5-6-107.

(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1982, P.L.149, SEC.2; P.L.14-1992, SEC.10.

IC 24-4.5-1-303

Index of definitions in article

Sec. 303. Index of Definitions in Articlet Definitions in this Article and the sections in which they appear are:

"Agreement" Section 1-301 (1)

"Agricultural purpose"	. Section 1-301 (2)
"Amount financed"	Section 2-111
"Average daily balance"	. Section 1-301 (3)
"Cash price"	
"Civil court"	
"Closing costs"	
"Conspicuous"	
"Consumer credit"	
"Consumer Credit insurance"	
"Consumer Credit sale"	
"Consumer lease"	
"Consumer loan"	
"Consumer related loan"	
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"Home solicitation sale"	
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"Loan"	
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"Merchandise certificate"	Section 2-105 (2)
"Mortgage transaction"	* /
"Official fees"	, ,
"Organization"	
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"Precomputed" (loan)	
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"Presumed" or "Presumption"	
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"Revolving charge account"	
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"Seller"	` '
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